

DOLL AMIR & ELEY LLP

11 ASHAMAD PINCHEM,

12 Plaintiff,

13 v.

14 REGAL MEDICAL GROUP, INC.,

15 Defendant.

Case No. 2:15-cv-06518-ODW (KSx)
Assigned to Judge Otis D. Wright, II
Referred to Magistrate Judge Karen L.
Stevenson

STIPULATED PROTECTIVE ORDER

Complaint Filed: August 26, 2015
Trial Date: TBD

18 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based
19 on the parties' Stipulation for Protective Order ("Stipulation") filed on April 13,
20 2016, the terms of the protective order to which the parties have agreed are
21 adopted as a protective order of this Court (which generally shall govern the
22 pretrial phase of this action) except to the extent, as set forth below, that those
23 terms have been modified by the Court's amendment of paragraph 5.1 of the
24 Stipulation.

1 **AGREED TERMS OF THE PROTECTIVE ORDER AS ADOPTED AND**
2 **MODIFIED BY THE COURT¹**

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4 **1. INTRODUCTION**

5 **A. PURPOSE AND LIMITATIONS**

6 Discovery in this action is likely to involve the production of documents
7 containing trade secrets, confidential commercial, personal, or financial information,
8 or protected health information and may otherwise require disclosure of such
9 information for which special protection from public disclosure and from use for any
10 purpose other than prosecution of this action is warranted. Accordingly, plaintiff
11 Ashamad Pinchem (“Plaintiff”) and defendant Regal Medical Group, Inc. (“Regal”)
12 (collectively, the “Parties”) acknowledge and agree that it is appropriate to provide
13 safeguards to prevent the public dissemination of such trade secret and/or confidential
14 information, to establish procedures to limit the necessity for objections or subsequent
15 motions regarding discovery, and to facilitate disposition of any discovery disputes
16 that may arise and, therefore, hereby stipulate to and petition the Court to enter the
17 following Stipulated Protective Order. The Parties acknowledge that this Order does
18 not confer blanket protections on all disclosures or responses to discovery and that the
19 protection it affords from public disclosure and use extends only to the limited
20 information or items that are entitled to confidential treatment under the applicable
21 legal principles. The Parties further acknowledge, as set forth in Section 12.3, below,
22 that this Stipulated Protective Order does not entitle them to file confidential
23 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
24 followed and the standards that will be applied when a party seeks permission from
25 the court to file material under seal.

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¹ The Court’s additions to the agreed terms of the Protective Order are generally indicated in bold
28 typeface, and the Court’s deletions are indicated by lines through the text being deleted.

1 **B. GOOD CAUSE STATEMENT**

2 This action is likely to involve the production of documents containing trade
3 secrets, confidential commercial, personal, or financial information, or protected
4 health information and may otherwise require disclosure of such information for
5 which special protection from public disclosure and from use for any purpose other
6 than prosecution of this action is warranted. Such confidential and proprietary
7 materials and information consist of, among other things, confidential business or
8 financial information, information regarding confidential business practices, or other
9 confidential research, development, or commercial information (including
10 information implicating privacy rights of third parties), information otherwise
11 generally unavailable to the public, or which may be privileged or otherwise protected
12 from disclosure under state or federal statutes, court rules, case decisions, or common
13 law. The Parties expressly understand and agree that certain documents and
14 information relevant to the claims and defenses in this action may contain information
15 that is subject to the Standards of Privacy of Individually Identifiable Health
16 Information, 45 C.F.R. Parts 160 and 164, promulgated pursuant to the Health
17 Insurance Portability and Accountability Act of 1996 (“HIPAA”); California Code of
18 Civil Procedure §§ 56 et seq.; or other similar statutory or regulatory privacy
19 protections. Accordingly, to expedite the flow of information, to facilitate the prompt
20 resolution of disputes over confidentiality of discovery materials, to adequately
21 protect information the Parties are entitled to keep confidential, to ensure that the
22 Parties are permitted reasonable necessary uses of such material in preparation for and
23 in the conduct of trial, to address their handling at the end of the litigation, and serve
24 the ends of justice, a protective order for such information is justified in this matter.
25 The Parties agree that, once adopted, this Stipulated Protective Order will constitute a
26 Qualified Protective Order under 45 CFR 164.512(e). It is the intent of the Parties
27 that information will not be designated as confidential for tactical reasons and that
28 nothing be so designated without a good faith belief that it has been maintained in a

1 confidential, non-public manner, and there is good cause why it should not be part of
2 the public record of this case.

3 **2. DEFINITIONS**

4 2.1 Action: the above-captioned action.

5 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
6 information or items under this Order.

7 2.3 "CONFIDENTIAL" Information or Items: information (regardless of how
8 it is generated, stored or maintained) or tangible things that qualify for protection
9 under Federal Rule of Civil Procedure 26(c), including confidential business,
10 financial, personal, health, proprietary, trade secret, protected health information or
11 commercial data of a sensitive nature and which is designated as Confidential
12 Information for purposes of this litigation by the Party or third party producing it, and
13 as specified above in the Good Cause Statement.

14 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
15 support staff).

16 2.5 Designating Party: a Party or Non-Party that designates information or
17 items that it produces in disclosures or in responses to discovery as
18 "CONFIDENTIAL."

19 2.6 Disclosure or Discovery Material: all items or information, regardless of the
20 medium or manner in which it is generated, stored, or maintained (including, among
21 other things, testimony, transcripts, and tangible things), that are produced or
22 generated in disclosures or responses to discovery in this matter.

23 2.7 Expert: a person with specialized knowledge or experience in a matter
24 pertinent to the litigation who has been retained by a Party or its counsel to serve as
25 an expert witness or as a consultant in this Action.

26 2.8 House Counsel: attorneys who are employees of a party to this Action,
27 including any subsidiaries or affiliates. House Counsel does not include Outside
28 Counsel of Record or any other outside counsel.

1 2.9 Non-Party: any natural person, partnership, corporation, association, or
2 other legal entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
4 this Action but are retained to represent or advise a party to this Action and have
5 appeared in this Action on behalf of that party or are affiliated with a law firm which
6 has appeared on behalf of that party, and includes support staff.

7 2.11 Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.

12 2.13 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.14 Protected Material: any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL.”

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
19 from a Producing Party.

20 **3. SCOPE**

21 The protections conferred by this Stipulation and Order cover not only
22 Protected Material (as defined above), but also (1) any information copied or
23 extracted from Protected Material; (2) all copies, excerpts, summaries, or
24 compilations of Protected Material; and (3) any testimony, conversations, or
25 presentations by Parties or their Counsel that might reveal Protected Material.

26 Any use of Protected Material at trial shall be governed by the orders of the
27 trial judge. This Order does not govern the use of Protected Material at trial.

1 The provisions of this Stipulated Protective Order apply to all proceedings in
2 this matter only. These obligations of confidentiality and non-disclosure shall survive
3 the conclusion of this action.

4 **4. DURATION**

5 Even after final disposition of this litigation, the confidentiality obligations
6 imposed by this Order shall remain in effect until a Designating Party agrees
7 otherwise in writing or a court order otherwise directs. Final disposition shall be
8 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
9 or without prejudice; and (2) final judgment herein after the completion and
10 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
11 including the time limits for filing any motions or applications for extension of time
12 pursuant to applicable law.

13 **5. DESIGNATING PROTECTED MATERIAL**

14 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**
15 Each Party or Non-Party that designates information or items for protection under this
16 Order must take care to limit any such designation to specific material that qualifies
17 under the appropriate standards. The Designating Party must designate for protection
18 only those parts of material, documents, items, or oral or written communications that
19 qualify so that other portions of the material, documents, items, or communications
20 for which protection is not warranted are not swept unjustifiably within the ambit of
21 this Order. Mass, indiscriminate, or routinized designations are prohibited.

22 **Designations that are shown to be clearly unjustified or that have been**
23 **made for an improper purpose (e.g., to unnecessarily encumber the case**
24 **development process or to impose unnecessary expenses and burdens on other**
25 **parties) may expose the Designating Party to sanctions.**

26 If it comes to a Designating Party's attention that information or items that it
27 designated for protection do not qualify for protection that Designating Party must
28 promptly notify all other Parties that it is withdrawing the inapplicable designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic
8 documents, but excluding transcripts of depositions or other pretrial or trial
9 proceedings), that the Producing Party affix at a minimum, the legend
10 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
11 contains protected material. If only a portion or portions of the material on a page
12 qualifies for protection, the Producing Party also must clearly identify the protected
13 portion(s) (e.g., by making appropriate markings in the margins).

14 A Party or Non-Party that makes original documents available for
15 inspection need not designate them for protection until after the inspecting Party has
16 indicated which documents it would like copied and produced. During the inspection
17 and before the designation, all of the material made available for inspection shall be
18 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
19 it wants copied and produced, the Producing Party must determine which documents,
20 or portions thereof, qualify for protection under this Order. Then, before producing
21 the specified documents, the Producing Party must affix the “CONFIDENTIAL
22 legend” to each page that contains Protected Material. If only a portion or portions of
23 the material on a page qualifies for protection, the Producing Party also must clearly
24 identify the protected portion(s) (e.g., by making appropriate markings in the
25 margins).

26 (b) for testimony given in depositions that the Designating Party identify
27 the Disclosure or Discovery Material on the record, before the close of the deposition
28 all protected testimony.

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
8 failure to designate qualified information or items does not, standing alone, waive the
9 Designating Party's right to secure protection under this Order for such material.
10 Upon timely correction of a designation, the Receiving Party must make reasonable
11 efforts to assure that the material is treated in accordance with the provisions of this
12 Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
15 designation of confidentiality at any time that is consistent with the Court's
16 Scheduling Order. Neither Party shall be obliged to challenge the propriety of a
17 designation of material as Confidential Information, and the failure to do so shall not
18 preclude a subsequent attack on the propriety of such designation, unless prejudice
19 can be shown by the Designating Party to have resulted from the delay in challenging
20 the designation.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
22 process under Local Rule 37.1 *et seq.*

23 6.3 The burden of persuasion in any such challenge proceeding shall be on
24 the Designating Party. Frivolous challenges, and those made for an improper purpose
25 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
26 expose the Challenging Party to sanctions. Unless the Designating Party has waived
27 or withdrawn the confidentiality designation, all parties shall continue to afford the

1 material in question the level of protection to which it is entitled under the Producing
2 Party's designation until the Court rules on the challenge.

3 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this
6 Action only for prosecuting, defending, or attempting to settle this Action. Such
7 Protected Material may be disclosed only to the categories of persons and under the
8 conditions described in this Order. When the Action has been terminated, a Receiving
9 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).
10 Protected Material must be stored and maintained by a Receiving Party at a location
11 and in a secure manner that ensures that access is limited to the persons authorized
12 under this Order.

13 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
14 otherwise ordered by the court or permitted in writing by the Designating Party, a
15 Receiving Party may disclose any information or item designated
16 “CONFIDENTIAL” only to:

17 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
18 well as employees of said Outside Counsel of Record to whom it is reasonably
19 necessary to disclose the information for this Action;

20 (b) the officers, directors, and employees (including House Counsel) of
21 the Receiving Party to whom disclosure is reasonably necessary for this Action;

22 (c) Experts (as defined in this Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this Action and who have signed the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (d) the court and its personnel;

26 (e) court reporters and their staff;

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1 (f) professional jury or trial consultants, mock jurors, and Professional
2 Vendors to whom disclosure is reasonably necessary for this Action and who have
3 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (g) the author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information;

6 (h) during their depositions, witnesses, and attorneys for witnesses, in the
7 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
8 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
9 not be permitted to keep any confidential information unless they sign the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
11 agreed by the Designating Party or ordered by the court. Pages of transcribed
12 deposition testimony or exhibits to depositions that reveal Protected Material may be
13 separately bound by the court reporter and may not be disclosed to anyone except as
14 permitted under this Stipulated Protective Order; and

15 (i) any mediator or settlement officer, and their supporting personnel,
16 mutually agreed upon by any of the parties engaged in settlement discussions.

17 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
IN OTHER LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation
20 that compels disclosure of any information or items designated in this Action as
21 “CONFIDENTIAL,” that Party must:

22 (a) promptly notify in writing the Designating Party. Such notification shall
23 include a copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to
25 issue in the other litigation that some or all of the material covered by the subpoena or
26 order is subject to this Protective Order. Such notification shall include a copy of this
27 Stipulated Protective Order; and

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1 (c) cooperate with respect to all reasonable procedures sought to be pursued by
2 the Designating Party whose Protected Material may be affected. If the Designating
3 Party timely seeks a protective order, the Party served with the subpoena or court
4 order shall not produce any information designated in this action as
5 “CONFIDENTIAL” before a determination by the court from which the subpoena or
6 order issued, unless the Party has obtained the Designating Party’s permission. The
7 Designating Party shall bear the burden and expense of seeking protection in that
8 court of its confidential material and nothing in these provisions should be construed
9 as authorizing or encouraging a Receiving Party in this Action to disobey a lawful
10 directive from another court.

11 **9. A NONPARTY'S PROTECTED MATERIAL SOUGHT TO BE**
12 **PRODUCED IN THIS LITIGATION**

13 (a) The terms of this Order are applicable to information produced by a Non-
14 Party in this Action and designated as “CONFIDENTIAL.” Such information
15 produced by Non-Parties in connection with this litigation is protected by the
16 remedies and relief provided by this Order. Nothing in these provisions should be
17 construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall: (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party; (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and (3) make the information requested available for inspection by the Non-Party, if requested.

1 (c) If the Non-Party fails to seek a protective order from this court within 14
2 days of receiving the notice and accompanying information, the Receiving Party may
3 produce the Non-Party's confidential information responsive to the discovery request.
4 If the Non-Party timely seeks a protective order, the Receiving Party shall not
5 produce any information in its possession or control that is subject to the
6 confidentiality agreement with the Non-Party before a determination by the court.
7 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
8 of seeking protection in this court of its Protected Material.

9 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
11 Protected Material to any person or in any circumstance not authorized under this
12 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
13 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
14 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
15 persons to whom unauthorized disclosures were made of all the terms of this Order,
16 and (d) request such person or persons to execute the "Acknowledgment and
17 Agreement to Be Bound" that is attached hereto as Exhibit A.

18 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
19 PROTECTED MATERIAL**

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other protection,
22 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
23 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
24 may be established in an e-discovery order that provides for production without prior
25 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
26 parties reach an agreement on the effect of disclosure of a communication or
27 information covered by the attorney-client privilege or work product protection, the
28 parties may incorporate their agreement in the stipulated protective order submitted to

1 the court.

2 **12. MISCELLANEOUS**

3 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
4 person to seek its modification by the Court in the future.

5 12.2 Right to Assert Other Objections. By stipulating to the entry of this
6 Protective Order no Party waives any right it otherwise would have to object to
7 disclosing or producing any information or item on any ground not addressed in this
8 Stipulated Protective Order. Similarly, no Party waives any right to object on any
9 ground to use in evidence of any of the material covered by this Protective Order.

10 12.3 Filing Protected Material. A Party that seeks to file under seal any
11 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
12 only be filed under seal pursuant to a court order authorizing the sealing of the
13 specific Protected Material at issue. If a Party's request to file Protected Material
14 under seal is denied by the court, then the Receiving Party may file the information in
15 the public record unless otherwise instructed by the court.

16 **13. FINAL DISPOSITION**

17 After the final disposition of this Action, as defined in paragraph 4, within 90
18 days of a written request by the Designating Party, each Receiving Party must return
19 all Protected Material to the Producing Party or destroy such material. As used in this
20 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
21 summaries, and any other format reproducing or capturing any of the Protected
22 Material. Whether the Protected Material is returned or destroyed, the Receiving
23 Party must submit a written certification to the Producing Party (and, if not the same
24 person or entity, to the Designating Party) by the 90 day deadline that (1) identifies
25 (by category, where appropriate) all the Protected Material that was returned or
26 destroyed and (2) affirms that the Receiving Party has not retained any copies,
27 abstracts, compilations, summaries or any other format reproducing or capturing any
28 of the Protected Material. Notwithstanding this provision, Counsel are entitled to

1 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
2 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
3 reports, attorney work product, and consultant and expert work product, even if such
4 materials contain Protected Material. Any such archival copies that contain or
5 constitute Protected Material remain subject to this Protective Order as set forth in
6 Section 4 (DURATION).

7 **14. VIOLATIONS**

8 Any violation of this Order may be punished by any and all appropriate
9 measures including, without limitation, contempt proceedings and/or monetary
10 sanctions.

11 **15. ENFORCEMENT**

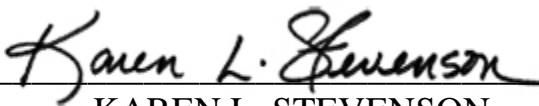
12 The Court shall have jurisdiction over the Parties hereto with respect to any
13 dispute concerning the enforcement or interpretation of this Stipulated Protective
14 Order.

15 **16. EXECUTION**

16 The Stipulated Protective Order may be executed in counterparts, each when
17 taken together with the others, shall constitute a whole, as if executed simultaneously
18 on the same document.

19 **IT IS SO ORDERED.**

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21 Dated: April 19, 2015

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24 KAREN L. STEVENSON
25 UNITED STATES MAGISTRATE JUDGE
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ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of *Ashamad Pinchem v. Regal Medical Group, Inc.*, Case No. 2:15-cv-06518-ODW-KLS. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

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